

## R E M A R K S

Reconsideration of this application, as amended, is courteously solicited.

Preliminarily, the applicant wishes to note that he no longer has access to the color chart originally employed, that is the Dictionary of Color, by Maerz and Paul, First Edition, 1930. It is thus not possible for the applicant to comply with the additional coloration requirements of the Office Action of December 13, 2004. The applicant thereby respectfully requests that these additional requirements be withdrawn.

The disclosure of the subject patent application was objected to under 37 CFR 1.1163(a) "because the specification presents less than a full and complete botanical description and the characteristics which distinguish over related known varieties." The applicant respectfully disagrees with this characterization of the specification as originally submitted. However, in a good faith effort to advance the prosecution of this case to allowance, the specification has been amended hereby to meet the Examiner's objections to the extent possible.

More specifically, paragraph “A” states “The specification does not “particularly point out where the variety of plant has been asexually reproduced.”” The specification has been amended on page 3, line 15 to state that “Such asexually reproduction took place at 19836 Road 196 in Strathmore, California in the United States of America.”

Paragraph “B” states “Age of the observed plant should be disclosed in the specification. Correction is necessary.” In response thereto, the specification has been amended on page 3, line 18 to state that “The original tree of the instant variety is ten (10) years old.”

Paragraph “C” states “Applicant should set forth in the specification that the claimed cultivar is stable and reproduces true to type in successive generations of asexual reproduction.” The specification has been amended on page 3, line 18 after the above insertion to insert the following response thereto: “The claimed cultivar is stable and reproduces true to type in successive generations of asexual reproduction.”

Paragraph “D” of the Office Action states “Applicant should set forth in the specification the average spread of the tree.” The specification has been amended on page 5, after line 8 to state “Spread – Approximately ten (10) feet.”

Paragraph "E" states "Page 5, lines 14-15, Applicant describes the trunk size as "10 inch" diameter but does not disclose at what age and at what the height the measurement was taken." The specification, in response thereto, has been amended on page 5, line 15 to clarify that "This measurement is of a tree of ten (10) years of age measured two (2) feet from the ground."

Paragraph "F" states "Page 5, line 17 and page 6, line 6, the recitations "Lenticels-Number-Numerous" do not adequately describe the average number of trunk and branch lenticels per given amount of area." Accordingly, the specification has been amended hereby to recite on page 6, line 6 that "The lenticels average ninety-four (94) per one inch of branch where the branch measures three-quarters ( $\frac{3}{4}$ ) of an inch in diameter."

Paragraph "G" states "Page 5, line 18 and page 6, line 8, the recitations "Small" do not quantitatively describe the average size of the lenticels of the trunk and branch." Accordingly, the specification has been amended hereby on page 6, line 8 to recite that "The average size of the lenticels is one-sixteenth ( $\frac{1}{16}$ ) of an inch and they are generally oblong in shape."

Paragraph "H" states "Applicant should set forth in the specification the shape and color designation with reference to the employed color chart of the trunk and branch lenticels." In response, the specification has been amended on page 6, after line 8 to state "The trunk is multiple on the parent

tree with a scaffold branch extending from the main trunk at a height of about three (3) feet from the ground and measuring about five (5) inches in diameter. From the scaffold branches, wood is extended which is about one (1) inch in diameter graduating to smaller diameters in the fruiting wood. The color of the trunk is light brown with darker color of brownish gray on the loose bark. More specifically, the trunk color is Brownish Manon (Pl. 6 A9) while the branches have an olive green coloration interrupted by brownish lenticels. All branches of the tree of the instant variety are generally round in shape.”

Paragraph “I” states “Page 6, line 16, the recitation “Marginal Form Generally – Smooth” is unclear because the term smooth is define as with an even surface or non hairless (see Harris et al, page 171). If the Applicant is referring to the margin of the leaf as not notched or not tooth then the term entire should be imported to the specification (see Harris et al, page 157).” In response, the specification has been amended on page 6, line 16 to state “The entire marginal form of the leaf is smooth.”

Paragraph “J” states “Applicant should set forth in the specification the surface texture, apex and base shape of the leaf.” Accordingly, the specification has been amended on page 6, after line 13 to read, as follows: “The surface of the leaf has a smooth appearance without hairs, rough texture, or any other characteristics that would deviate from a smooth appearance. The apex of the leaf comes to a tapered point and the base shape of the leaf is rounded.”

Paragraph "K" states "On page 6, line 18 and on page 7, line 1, the recitation regarding the petiole size is described twice and one of these should be deleted." In response thereto, the specification has been amended on page 7, line 1 to delete "Petiole – Short. 2 mm (0.079 inches) to 3 mm (0.12 inches)."

Paragraph "L" states "Applicant should set forth in the specification a botanical description of the stipules such as average size, shape and color designation with reference to the employed color chart." This information is not available to the applicant.

Paragraph "M" states "Applicant should set forth in the specification a botanical description of the spines such as length and color designation, if any." In response, the specification has been amended on page 7, before line 2 to recite "Spines are located approximately two (2) inches apart on second (2<sup>nd</sup>) year old wood. They are located in sets of pairs with the spines being positioned across from each other. They vary in size from one-eighth (1/8) inch in length to three and one half (3 1/2) inches in length." The color of the spines is not available to the applicant.

Paragraph "N" states "Applicant should set forth in the specification the color designation of the style and stigma." The coloration of the style and stigma is not available to the applicant.

Paragraph "O" states "Page 7, line 18, the recitation "Over 60" is vague and does not sufficiently describe the average number or the average range of stamens per flower." Accordingly, the specification has been amended on page 7, line 18 to state "Average on hundred and ten (110) per flower."

Paragraph "P" states "Page 7, line 19, the recitation "Small" does not quantitatively describe the average size of the anthers." In response, the specification has been amended on page 7, line 19 to state "The average length of the anthers is two (2) mm."

Paragraph "Q" states "Page 7, line 21, the recitation "Red" is vague and does not adequately describe the color designation with reference to the employed color chart of the filaments." This information is not available to the applicant.

Paragraph "R" states "Applicant should set forth in the specification the sepal's average size and color designation with reference to the employed color chart." This information is not available to the applicant.

Paragraph “S” states “Applicant should set forth in the specification the calyx’s shape.” In response, the specification has been amended on page 8, after “Ventral Surface – Generally N/A” to state “The calyx forms a definite crown on the apex. The points on the calyx number six (6) per piece of fruit. The calyx stays pointed and upright more than a flaring pattern.”

Paragraph “T” states “Page 8, line 17, the recitation regarding to the size of the stem should be deleted because it is described above on page 8, line 15.” Accordingly, the specification has been amended, on page 8, line 17 to delete “Stem- Generally – Very short.”

Paragraph “U” states “Applicant should set forth in the specification a botanical description of the seed such as average size, shape and color designation with reference to the employed color chart.” In response, the specification has been amended on page 9, after line 2 to insert the following description of the seed: “Seed – The average length of the seed is one (1) cm by one half (1/2) cm in diameter. The shape of the seed is more rounded at one end than the other. The rounded end has most of the red coloration. The endocarp in the arils is very soft and very minor if at all noticeable. Comparing the endocarp of the instant variety to that of other known varieties, such as the ‘Wonderful,’ the ‘Early Foothill’ and the ‘Granada,’ there is a distinct and noticeable difference in the eating quality. The endocarp in the instant variety dissolves completely without a residue left. The other aforementioned varieties have a hard endocarp

that is noticeable and hard to chew.” Information regarding coloration with reference to the employed color chart is not available to the applicant.

As stated in the subject Office Action on page 4 thereof:

“No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as reasonably possible.”

In view of this amendment and the foregoing remarks, the applicant believes that the description of the subject application is certainly as complete as reasonably possible and that the claim is allowable.

In view of the foregoing, it is believed this case is in condition for allowance.

Therefore, prompt Notice of Allowance of the subject application including the claim is respectfully requested.



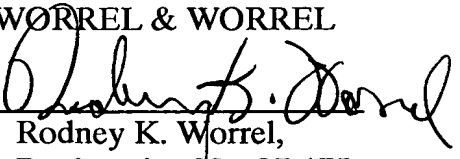
The applicant, through his attorney of record, authorizes the Examiner to telephone the attorney collect in the event a telephone discussion could be helpful to the prosecution of this application.

Respectfully submitted,

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